

# H. R. 933

IN THE HOUSE OF REPRESENTATIVES

Mr. WEISS introduced the following bill; which was referred jointly to the Committees on Government Operations, Energy and Commerce, and the Judiciary

# A BILL

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

4       SECTION 1. This Act may be cited as the "Federal Pri-  
5   vacy of Telephone Records Act".

7 SEC. 2. (a) The Congress finds that—

1           (1) the right to privacy is a personal and funda-  
2           mental right protected by the Constitution of the  
3           United States;

4           (2) the records of telecommunications provide in-  
5           dependent documentation of communications which,  
6           before the advent of the telephone, were considered  
7           uniquely private in character;

8           (3) our current legal system severely restricts  
9           access to the contents of telecommunications;

10          (4) the mere fact of a communication is often as  
11          revealing as the content;

12          (5) increasingly sophisticated telecommunications  
13          technologies permit and encourage telecommunications  
14          common carriers to keep records of the existence, date,  
15          location, time, and even parties to telecommunications;  
16          and

17          (6) the unprotected nature of records of the fact of  
18          a telecommunication endangers the privacy of Ameri-  
19          can citizens and chills the exercise of individual rights.

20          (b) The purposes of this Act are—

21               (1) to protect the privacy of telecommunications  
22               records from unwarranted disclosure; and

23               (2) to limit intrusion into personal privacy even  
24               where disclosure to government is deemed appropriate.

1        AMENDMENT TO TITLE 5, UNITED STATES CODE

2        SEC. 3. Section 552a of title 5, United States Code, is  
3 amended by inserting after subsection (q) the following new  
4 subsections:

5        “(r)(1) TELEPHONE RECORDS.—The head of each  
6 agency which maintains telephone record information (as de-  
7 fined by section 225(a)(6) of the Communications Act of  
8 1934) shall designate an officer of supervisory rank in the  
9 agency to serve as telephone record custodian and shall pro-  
10 mulgate regulations as necessary to carry out the provisions  
11 of this paragraph and paragraph (2). The telephone record  
12 custodian shall—

13            “(A) take possession of all telephone record infor-  
14 mation possessed or acquired by the agency;

15            “(B) be responsible for the use and disclosure of  
16 all such information;

17            “(C) cause the preparation of any copies of the in-  
18 formation to the extent required for official use pursu-  
19 ant to the provisions of this paragraph or paragraph (2)  
20 and regulations adopted pursuant thereto;

21            “(D) not disclose any telephone record information  
22 except in accordance with paragraph (2);

23            “(E) upon the completion of—

24                    “(i) the investigation for which telephone  
25 record information was acquired by the agency, or

1                   “(ii) a case or proceeding arising from the in-  
2                   vestigation,  
3                   return to the person who produced the record all mate-  
4                   rial which has not passed into the control of a court or  
5                   grand jury through introduction into the record of a  
6                   case or proceeding.

7   When any telephone record information has been produced  
8   by a person under this section for use in an investigation, and  
9   no case or proceeding arising therefrom has been instituted  
10   within a reasonable time after completion of the examination  
11   and analysis of all evidence assembled in the course of the  
12   investigation, such person shall be entitled, upon written  
13   demand made upon the head of the agency, to the return of  
14   all telephone record information produced by the person.

15               “(2) An agency, or any officer or employee thereof, shall  
16   not disclose any telephone record information (as defined by  
17   section 225(a)(6) of the Communications Act of 1934) to any  
18   person or make a copy of any telephone record information  
19   except—

20               “(A) with the written consent of the customer (as  
21   defined by section 225(a)(1) of such Act) to whom the  
22   telephone record information pertains;

23               “(B) to an attorney for the United States for the  
24   presentation of a case or proceeding before a court or  
25   grand jury on behalf of the United States which arose

1 out of the investigation for which the telephone record  
2 information was acquired, when the attorney designat-  
3 ed to appear on behalf of the United States in the pro-  
4 ceeding or case determines that disclosure is required,  
5 but upon the conclusion of any such case or proceed-  
6 ing, the attorney shall return to the custodian any tele-  
7 phone record information which has not passed into the  
8 record of the case or proceeding; or

9 “(C) at the written direction of the head of the  
10 agency, to a Government authority of the United  
11 States authorized by statute or Executive order to con-  
12 duct foreign intelligence or counterintelligence activi-  
13 ties solely for the purpose of conducting such activi-  
14 ties.”.

15 AMENDMENT TO COMMUNICATIONS ACT OF 1934

16 SEC. 4. The Communications Act of 1934 is amended  
17 by inserting after section 224 the following new section:

18 “TELEPHONE RECORDS

19 “SEC. 225. (a) For purposes of this section:

20 “(1) The term ‘customer’ means any person or  
21 authorized representative of such person who is sub-  
22 scribing or has subscribed to the services of a service  
23 provider.

24 “(2) The term ‘Government authority’ means any  
25 agency, department, bureau, or other authority of the

1 Federal Government, or of any State, commonwealth,  
2 territory, or possession, or any political subdivision  
3 thereof, or any officer, employee, or agent of any of  
4 the foregoing.

5 “(3) The term ‘intercept’ means to acquire tele-  
6 phone record information at any time from initiation to  
7 completion of a telephone call, telegram, or similar  
8 message, through the use of any electronic, mechan-  
9 cal, or other device.

10 “(4) The term ‘service provider’ means any  
11 common carrier or other person who provides telecom-  
12 munications transmission services within the territory  
13 of the United States, including any operator of a cable  
14 television or cable radio system. Such term does not  
15 include any person engaging in television or radio  
16 broadcasting.

17 “(5) The term ‘telecommunication’ means any  
18 telephone call or other transmission, emission, or re-  
19 ception of signs, signals, writings, images, and sound  
20 or intelligence of any nature by wire, radio, optical, or  
21 other electromagnetic systems.

22 “(6) The term ‘telephone record information’  
23 means any information, other than the contents of a  
24 communication, which makes it possible to determine  
25 the existence, date, time, location, or parties involved

1 in any telephone call or in any other telecommunica-  
2 tion, including information recorded by means of a pen  
3 register or similar device.

4 “(b)(1) No service provider or its officers, employees, or  
5 agents shall disclose telephone record information or grant  
6 permission for an intercept of such information, except—

7 “(A) to a Government authority as provided by  
8 subsection (c); or

9 “(B) pursuant to the specific authorization of the  
10 customer identified by the telephone record.

11 “(2) Nothing in this section prohibits a service provider  
12 from disclosing telephone record information to its employees  
13 or agents to the extent necessary as a part of its provision of  
14 services.

15 “(3) Nothing in this section prohibits the disclosure of  
16 any telephone record information which is not identified with,  
17 or identifiable as being derived from, the telephone records of  
18 a particular customer.

19 “(c) A service provider may disclose telephone record  
20 information or may permit an intercept of a telecommunica-  
21 tion for the purpose of obtaining telephone record informa-  
22 tion—

23 “(1) pursuant to the provisions of the Foreign In-  
24 telligence Surveillance Act of 1978 (50 U.S.C. 1801 et  
25 seq.);

1           “(2) pursuant to a court ordered response to a  
2           summons or subpoena which was issued under the re-  
3           quirements of subsection (d);

4           “(3) pursuant to a court order obtained under the  
5           provisions of subsection (e) and subsection (f); or

6           “(4) pursuant to the emergency provisions of sub-  
7           section (g).

8           “(d)(1) A supervisory officer of a Government authority  
9           designated by regulation by the head of such authority may  
10          authorize or seek the issuance of an administrative summons  
11          or subpoena or a judicial summons or subpoena in order to  
12          obtain telephone record information from a service provider.

13          “(2) A customer, to the extent that telephone record  
14          information sought under this subsection relates to his sub-  
15          scribed services, shall—

16                 “(A) be served with a copy of any summons or  
17                 subpoena issued pursuant to paragraph (1), or have a  
18                 copy mailed to his last known address on or before the  
19                 date on which the summons or subpoena is served on  
20                 the service provider, together with a notice of the cus-  
21                 tomer’s right to challenge the summons or subpoena, in  
22                 accordance with subparagraph (C) and subparagraph  
23                 (D);

1           “(B) be permitted ten days from the date of serv-  
2       ice or fourteen days from the date of the mailing to  
3       reply to the summons or subpoena;

4           “(C) be permitted to file (without filing fee) a  
5       motion to quash or otherwise limit the summons or  
6       subpena—

7           “(i) in the case of a judicial subpoena, in the  
8       court which issued it;

9           “(ii) in the case of any other subpoena or  
10       summons issued by a government authority of a  
11       State, in a court of competent jurisdiction; or

12          “(iii) in the case of any other summons or  
13       subpena issued by a government authority of the  
14       United States, in the United States district court  
15       in the district where the customer resides, in the  
16       district in which the summons or subpoena was  
17       issued, or in any other court of competent juris-  
18       diction; and

19          “(D) be permitted to oppose, or seek to limit, the  
20       summons or subpoena on any grounds which would oth-  
21       erwise be available if the customer were in possession  
22       of the information.

23          “(3) A court may order disclosure of telephone record  
24       information pursuant to a summons or subpoena issued under  
25       paragraph (1) if—

1           “(A) a customer fails to initiate a challenge to the  
2       summons or subpoena within the time limits established  
3       by paragraph (2)(B); or

4           “(B) the court determines, after the customer is  
5       afforded an opportunity to challenge the summons or  
6       subpoena pursuant to paragraph (2), that—

7           “(i) there are reasonable grounds to believe  
8       that the information will be relevant to an investi-  
9       gation of a crime enumerated in subsection (e) or  
10      to a case or proceeding arising out of such inves-  
11      tigation; and

12          “(ii) the Government authority has estab-  
13      lished that it possesses the authority to obtain the  
14      information from the custody of the customer.

15   A court may limit the scope of, or otherwise modify, any  
16   summons or subpoena it orders to be enforced under subpara-  
17   graph (B) as it determines would be in the interest of justice.  
18   In any order issued under this subsection the court shall cite  
19   this subsection as authority for the order.

20          “(e)(1) The Attorney General, an Assistant Attorney  
21   General, or a designated attorney who is an officer of the  
22   Department of Justice specifically authorized by regulation,  
23   may authorize an application to a United States district court  
24   of competent jurisdiction for an order to acquire telephone  
25   record information from a service provider or to intercept

1 telephone record information when such acquisition or inter-  
2 ception may provide evidence of a criminal offense under a  
3 Federal law which constitutes a felony.

4       “(2) The Attorney General or chief criminal prosecutor  
5 of a State may authorize an application to a State court of  
6 competent jurisdiction for an order to acquire telephone  
7 record information from a service provider or to intercept  
8 telephone record information when the acquisition or inter-  
9 ception may provide evidence of a criminal offense which in-  
10 volves murder, kidnaping, robbery, extortion, forgery, brib-  
11 ery, embezzlement, fraud, racketeering, a violation of this  
12 subsection, or any other crime which threatens serious physi-  
13 cal injury to an individual or will result in serious damage to  
14 property and is punishable by imprisonment for more than  
15 one year.

16       “(3) Each application pursuant to paragraph (1) and  
17 paragraph (2) shall be made in writing upon oath or affirma-  
18 tion to a court of competent jurisdiction. Each application  
19 shall include the following information—

20               “(A) the identity of the investigative or law en-  
21 forcement officer making, and the officer authorizing,  
22 the application;

23               “(B) a full statement of the facts and circum-  
24 stances relied upon by the applicant to justify his belief  
25 that an order should be issued, including—

1           “(i) a reasonable description of the nature  
2           and location of the facilities from which, or the  
3           place where, the telephone record information is  
4           to be intercepted or of the service provider from  
5           whom the information will be obtained; and

6           “(ii) the identity of the person, if known,  
7           committing the offense with respect to which tele-  
8           phone record information is to be intercepted or  
9           records are to be acquired;

10          “(C) a reasonable description of what other inves-  
11          tigative procedures have been tried and failed, or why  
12          other investigative procedures reasonably appear to be  
13          unlikely to succeed if tried;

14          “(D) a statement of the period of time for which  
15          an interception is likely to be required to be maintained  
16          and, if the nature of the investigation is such that the  
17          authorization for interception should not automatically  
18          terminate when the described telephone record infor-  
19          mation has been first obtained, a particular description  
20          of facts establishing reasonable cause to believe that  
21          additional telephone record information of the same  
22          type will occur thereafter;

23          “(E) to the extent known, a full statement con-  
24          cerning all previous applications for authorization to in-  
25          tercept, or for approval of interceptions begun under

1 the emergency provisions of subsection (g), telephone  
2 record information involving any of the same persons  
3 specified in the application; and

4 “(F) where the application is for the extension of  
5 an order authorizing or approving interception, a state-  
6 ment setting forth the results thus far obtained from  
7 the interception, or a reasonable explanation of the  
8 failure to obtain such results.

9 The court hearing the application involved may require the  
10 applicant to furnish additional evidence in support of an ap-  
11 plication.

12 “(f)(1) Upon application pursuant to subsection (e), the  
13 court may enter an ex parte order, as requested or as modi-  
14 fied, authorizing or approving interception or acquisition of  
15 telephone record information within the jurisdiction of the  
16 court, if it determines on the basis of the facts submitted by  
17 the applicant that—

18 “(A) there is reasonable cause to believe that an  
19 individual is committing, has committed, or is about to  
20 commit an offense enumerated in subsection (e)(1) or  
21 subsection (e)(2);

22 “(B) there is reasonable cause to believe that in-  
23 formation or evidence obtained through interception or  
24 acquisition of telephone record information identified

1 with the individual will be relevant to the offense iden-  
2 tified pursuant to subsection (e)(3)(B); and

3 “(C) alternative investigative procedures to obtain  
4 the same information or evidence have been tried and  
5 failed or reasonably appear to be unlikely to succeed if  
6 tried and the information sought is not reasonably  
7 available elsewhere.

8 “(2) Each order authorizing or approving the intercep-  
9 tion of any telephone record information or the acquisition of  
10 any telephone record information from a service provider  
11 shall specify—

12 “(A) the identity of the customer, if known,  
13 whose telephone record information is to be intercept-  
14 ed, or the identity of the customer whose telephone  
15 record information is to be acquired from a service pro-  
16 vider;

17 “(B) the nature and location of the facilities as to  
18 which, or the place where, authority to intercept or to  
19 acquire records is granted;

20 “(C) a statement of the offense to which they  
21 relate;

22 “(D) the identity of the agency authorized to in-  
23 tercept or to acquire the telephone record information  
24 from the service provider; and

1           “(E) the period of time during which interception  
2       is authorized, including a statement as to whether or  
3       not the interception shall automatically terminate when  
4       the described telephone record information has been  
5       first obtained.

6       “(3) No order may authorize or approve the interception  
7       of any telephone record information for any period longer  
8       than is necessary to achieve the objective of the authoriza-  
9       tion, nor in any event longer than thirty days.

10       “(4) Extensions of an order authorizing interceptions  
11       may be granted, but only upon application for an extension  
12       made in accordance with subsection (e)(3) and with the court  
13       making the findings required by this subsection. The period of  
14       extension shall be no longer than the authorizing judge  
15       deems necessary to achieve the purposes for which it was  
16       granted and in no event for longer than thirty days.

17       “(5) Every order authorizing interception and extension  
18       shall contain a provision that the authorization to intercept  
19       shall be executed as soon as practicable, shall be conducted  
20       in such a way as to minimize the interception of telephone  
21       record information not subject to interception under the order  
22       or extension, and shall terminate upon attainment of the au-  
23       thorized objective, or in any event in thirty days.

24       “(6) Whenever an order authorizing interception for a  
25       period in excess of forty-eight hours is entered, the order may

1 require reports to be made to the court which issued the  
2 order showing what progress has been made toward achieve-  
3 ment of the authorized objective and the need for continued  
4 interception. Such reports shall be made at such reasonable  
5 intervals as the court may require.

6       “(7) Applications made and orders granted under this  
7 section shall be sealed by the court. Custody of the applica-  
8 tions and orders shall be wherever the court directs. The  
9 applications and orders shall be disclosed only upon a show-  
10 ing of good cause before a court of competent jurisdiction and  
11 shall not be destroyed except on order of the issuing or deny-  
12 ing court, and in any event shall be kept for ten years.

13       “(g)(1) Notwithstanding any other provision of this sec-  
14 tion, any investigative or law enforcement officer, specially  
15 designated in regulation by the Attorney General or by the  
16 principal prosecuting attorney of any State and acting pursu-  
17 ant to a statute of such State, who reasonably determines  
18 that—

19               “(A) an emergency situation exists with respect to  
20 criminal activities threatening to life which requires  
21 that telephone record information be intercepted or ac-  
22 quired before an order authorizing such interception or  
23 acquisition can with due diligence be obtained; and

24               “(B) there are grounds upon which an order could  
25 be entered to authorize the interception or acquisition;

1 may intercept or acquire the telephone record information.

2       “(2) An application for an order approving an intercep-  
3 tion or acquisition pursuant to paragraph (1) shall be made in  
4 accordance with this subsection within forty-eight hours after  
5 the acquisition or after the interception occurs, or begins to  
6 occur. In the absence of an order, an interception shall imme-  
7 diately terminate when the information sought is obtained or  
8 when the application for the order is denied, whichever is  
9 earlier. In the event the application for the order is not ap-  
10 proved, an inventory shall be served on the person named in  
11 the application as provided for in subsection (h).

12       “(3) Notwithstanding any other provision of this section,  
13 a special agent of the Secret Service may, for the purpose of  
14 carrying out the protective functions of the Secret Service  
15 under section 3056 of title 18, United States Code (relating  
16 to Secret Service functions), under section 202 of title 3 of  
17 such Code (relating to the Executive Protective Service), or  
18 under the Act of June 6, 1968 (18 U.S.C. 3056, note; 82  
19 Stat. 170; relating to Secret Service protection of Presiden-  
20 tial candidates), acquire or intercept telephone record infor-  
21 mation, except that—

22               “(A) the Director of the Secret Service shall au-  
23 thorize the acquisition or interception after determining  
24 that there is reason to believe that acquisition or inter-

1       ception is necessary in order to carry out the protec-  
2       tive functions of the Secret Service;

3               “(B) an interception shall immediately terminate  
4       when the needed information is obtained;

5               “(C) the officer authorizing the acquisition or in-  
6       terception shall certify in writing within forty-eight  
7       hours to a United States district court of competent ju-  
8       risdiction that—

9               “(i) acquisition or interception of the tele-  
10       phone record information of a designated customer  
11       occurred or is occurring; and

12               “(ii) there was reason to believe that acquisi-  
13       tion or interception was necessary in order to  
14       carry out the protective functions of the Secret  
15       Service; and

16               “(D) if, after receiving the certification required  
17       by subparagraph (C), the court finds that the require-  
18       ments of subparagraph (A) and subparagraph (B) were  
19       not met, the court shall order termination of the acqui-  
20       sition or interception, if not yet terminated, and an in-  
21       ventory shall be served on the customer whose tele-  
22       phone record information was acquired or intercepted  
23       as provided for in subsection (h).

24               “(h)(1) Within a reasonable time, but not later than one  
25       hundred and twenty days, after the denial of an application

1 for an order under subsection (f) or the termination of the  
2 period of an order or an extension thereof, the issuing or  
3 denying court shall cause to be served on the persons named  
4 in the order or the application, and such other parties to in-  
5 tercepted or acquired telephone record information as the  
6 court may determine in its discretion are in the interest of  
7 justice, an inventory which shall include notice of—

8           “(A) the fact of the entry of the order or the ap-  
9           plication;

10           “(B) the date of the entry, or the denial, of the  
11           application;

12           “(C) the period of authorized, approved, or disap-  
13           proved interception, if telephone record information  
14           was intercepted; and

15           “(D) the fact that during such period telephone  
16           record information was or was not intercepted.

17           “(2) The court may in its discretion make available to  
18 the customer whose telephone record information was inter-  
19 cepted or acquired or his counsel for inspection portions of  
20 the telephone record information, the application, and the  
21 order.

22           “(3) Upon request by the applicant for an order, the  
23 court may grant a delay in service of the inventory or any  
24 other notification pursuant to paragraph (1), which delay  
25 shall not exceed one hundred and eighty days following the

1 conclusion of the interception, if the court finds, upon the  
2 showing of the applicant, that there is reasonable cause to  
3 believe that service of the inventory would—

4 “(A) endanger the life or physical safety of any  
5 person;

6 “(B) result in flight from prosecution;

7 “(C) result in destruction of, or tampering with,  
8 evidence; or

9 “(D) result in intimidation of potential witnesses.

10 If the court so finds, it shall enter an ex parte order granting  
11 the requested delay. Additional delays of not more than  
12 ninety days may be granted by the court upon application,  
13 but only in accordance with this paragraph. Upon expiration  
14 of the period of delay, the inventory shall be served immedi-  
15 ately.

16 “(i) Any violation of the provisions of subsection (d), (e),  
17 (f), (g), or (h) may be punished as contempt of the court issu-  
18 ing or denying an order.

19 “(j) Whoever, other than a party to the telecommunica-  
20 tion identified by telephone record information, in violation of  
21 this subsection intentionally discloses telephone record infor-  
22 mation or intercepts telephone record information shall be  
23 fined not more than \$100,000 or imprisoned not more than  
24 five years, or both.

1       “(k)(1) A person aggrieved by a violation of this section  
2 in respect to telephone record information which identifies a  
3 telecommunication to which he was a party may maintain a  
4 civil action for actual damages and for equitable relief  
5 against—

6           “(A) the United States, an authority of a State  
7 which has waived its sovereign immunity under the  
8 Constitution to a claim for damages resulting from a  
9 violation of this section, or any other governmental  
10 unit, each of which shall be liable for violations of this  
11 section by their officers or employees while the officers  
12 or employees are acting within the scope of their office  
13 or employment; and

14           “(B) an officer or employee of a State who has  
15 violated this section, if the State has not waived its  
16 sovereign immunity as provided in subparagraph (A),  
17 or an officer or employee of the United States, a State,  
18 or any other governmental unit who has violated this  
19 section while acting outside the scope of his office or  
20 employment; and

21           “(C) any other violator.

22 The district courts of the United States shall have jurisdiction  
23 in the matters under the provisions of this subsection.

24       “(2) Any person entitled to recovery under this subsec-  
25 tion shall receive not less than \$10,000.

1       “(3) In any suit brought under this subsection in which  
2 the complainant has substantially prevailed, the court may, in  
3 addition to any actual damages or equitable relief, award  
4 such punitive damages as may be warranted and may assess  
5 against the defendant reasonable attorney fees and other  
6 costs of litigation reasonably incurred.

7       “(l) Whenever telephone record information has been  
8 disclosed, intercepted, or acquired in violation of this section,  
9 no part of such information and no evidence derived there-  
10 from may be received in evidence in any trial, hearing, or  
11 other proceeding in or before any court, grand jury, depart-  
12 ment, officer, agency, regulatory body, legislative committee,  
13 or other authority of the United States, a State, or a political  
14 subdivision thereof, except to the extent that the telephone  
15 record information is used in the prosecution of a violation of  
16 this section or as evidence to impeach perjured testimony.

17       “(m) A good faith reliance on a court order issued pur-  
18 suant to subsection (d) or subsection (f), or on the provisions  
19 of the Foreign Intelligence Surveillance Act of 1978 (50  
20 U.S.C. 1801 et seq.), where applicable, or on the provisions  
21 of subsection (g), shall constitute a complete defense to any  
22 civil action for damages brought under this section.”.

○